

November 4, 2003

BANGOR HYDRO-ELECTRIC COMPANY  
Proposed Tariff Revision Subsection 4-K  
Authorizing BHE or its Vendor to Charge a Fee  
For Customers to Pay Their Bills Under an  
Electronic Bill Payment Arrangement

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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## **I. SUMMARY**

In this Order we approve Bangor Hydro-Electric Company's (BHE) Term and Condition 4-K that allows BHE or its vendor to charge a fee when BHE customers choose to pay their bills under an electronic bill payment arrangement, as described in this Order.

## **II. BACKGROUND**

On October 6, 2003,<sup>1</sup> BHE filed proposed terms and conditions that will allow its vendor to charge a fee to BHE customers who chose to pay their bills electronically:

4-K ELECTRONIC BILL PAYMENT. The Company may institute a program whereby customers may pay any amounts owed the Company for service by using a credit card, debit card, ACH (automated clearinghouse) or pre-authorized draft (collectively, electronic bill payment). The Company or any vendor retained by the Company to process any payments by electronic bill payment may charge customers a fee for processing payments, so long as the customer is informed of the specific amount of the fee prior to making the payment.

According to the letter accompanying the filing, BHE has had such an arrangement in place since August 1, 2003. BHE also enclosed correspondence from the Public Advocate Stephen Ward and BHE's counsel to the State's Office of Consumer Credit Regulation asking for an opinion concerning the legality of such a charge under 9-A M.R.S.A. § 8-303(2).<sup>2</sup>

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<sup>1</sup> BHE filed a revised terms and conditions on October 29, 2003, correcting the numbering of the terms and conditions.

<sup>2</sup> 9-A M.R.S.A. 8-303(2) provides: "No seller in any sales transactions may impose a surcharge on a cardholder who elects to use a credit card in lieu of payments by cash, check or similar means."

On October 20, William Lund, the Director of Consumer Credit Regulation, sent a letter to Mr. Ward offering his preliminary opinion that “if these fees are assessed by a seller or its third party provider for all electronic payments, both credit and non-credit, [e.g. debit from checking accounts; debit cards; and credit cards] then the fee can properly be characterized as an electronic payment fee or convenience fee, and 9-A M.R.S.A. § 8-303(2) does not restrict the seller from assessing the fee for this service.”

### III. DECISION

Title 35-A M.R.S.A. § 304 requires a public utility to file schedules reflecting its rates as well as filing all “terms and conditions that in any manner affect the rates charged or to be charged for any service.” In this instance, a third party vendor, with whom BHE contracts, imposes a charge for processing a payment electronically. Although not a BHE rate, we find that the charge imposed affects BHE’s rates and therefore BHE must include a description of the charge in its Terms and Conditions.

BHE’s proposed Term and Condition 4-K adequately describe the charge. As stated in BHE’s proposed Term and Condition, BHE must inform a customer of the amount of any fee prior to the customer making a payment by credit card, debit card or ACH (automated clearinghouse). The Public Advocate submitted a letter on October 30, 2003, stating it did not object to the Terms and Conditions as proposed as long as customers receive prior notice and consent to the charge prior to electronic payment. Therefore, we will allow the Term and Condition 4-K to go into effect on November 3, 2003, as proposed by BHE.

Dated at Augusta, Maine, this 4<sup>th</sup> day of November, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Diamond  
   Reishus

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.